

**BOARD OF ENVIRONMENTAL PROTECTION
Meeting Minutes**

April 21, 2005

A meeting of the Board of Environmental Protection was held on Thursday, April 21, 2005, at the Holiday Inn / Ground Round in Augusta, Maine. Richard Wardwell, Chair, called the meeting to order at 9:00 a.m. with the following individuals present:

Board: Ernest Hilton, Nancy Anderson, Irving Faunce, Donald Guimond, Virginia Plummer, Richard Wardwell, Jean T. Wilkinson, Nancy Ziegler and Matt Scott

Board attendance for afternoon public hearing: Ernest Hilton, Donald Guimond, Virginia Plummer, Richard Wardwell, Nancy Ziegler and Matt Scott

<u>Staff:</u>	<u>Bureau of Land and Water Quality</u>	Hetty Richardson
	<u>Bureau of Land and Water Quality</u>	Mike Mullen
	<u>Bureau of Land and Water Quality</u>	Dennis Merrill
	<u>Bureau of Remediation and Waste Management</u>	Diana McKenzie

Others: Dawn R. Gallagher, Commissioner
David P. Littell, Deputy Commissioner
Denny Harnish, Assistant Attorney General
Cynthia Bertocci, Executive Analyst
Terry Hanson, Administrative Assistant

(Meeting adjourned at approximately 2:30 p.m.)

I. DEPARTMENTAL

A. COMMISSIONER'S COMMENTS: Commissioner Dawn Gallagher reported the following:

Commissioner Gallagher asked the Board to enter into an executive session to discuss the appeal of the decision in the matter of the Fort Halifax Dam.

Commissioner Gallagher sought legal advice from the Assistant Attorney General on expanding the scope of an executive session to discuss (New Board Member nominations and comments from members of the Natural Resources Committee related to LD 1149).

Denny Harnish advised that these topics do not fall under the criteria for an executive session.

The Board voted (9-0-0-0) on a motion to enter into executive session to discuss litigation related to a pending court matter regarding the Board's decision on the Fort Halifax Dam.

The Board voted (9-0-0-0) on a motion to resume the regular meeting at the conclusion of the executive session.

Deputy Commissioner David Littell Commented that:

BEP Jurisdiction: The Department has received three requests for BEP Jurisdiction: 1) Poland Spring application to increase withdrawal of groundwater; 2) Union Gas Dam repair on Messalonskee Stream, [the Department held a public information session]; and 3) Blueberry Ridge Mobile Village in Wells - application for expansion of subdivision. Petitioners' concerns relate to wastewater disposal.

Appeals to Court: Dennis Harnish successfully defended the Kennebec Agreement between the State and numerous interested parties related to fish passage and dam removals. The Attorney General's Office won the case on arguments related to the statute of limitation. Additionally, Peggy Bensinger defended the Department's decision regarding denial of a recreational dock in the case of Kroeger vs. DEP.

Legislative: The ZEV program will be before the Legislature in a work session. Some minor changes to the early-introduction credit formulas and new language for a "ramp-up" credit provision were included as amendments to the Board's proposed rule. Additionally, a bill that proposed to modify the recently adopted Chapter 151, Architectural Industrial Coatings and Maintenance rule came out of committee with a vote of 5 to 4. The proposed changes will not impact the VOC credits in the proposed SIP plan according to air bureau staff. The Minority report was to leave the rule as adopted without changes.

Questions: Board member Virginia Plummer asked when LD 597 dealing with the burning of construction and demo debris will be scheduled before the Legislature.

Commissioner Gallagher advised that LD 597 and several other Bills are scheduled for review next week and noted that the Bill addressing vertical expansion of landfills would also be heard. Action Item: The Board's Administrative Assistant will provide electronic notice of the schedule for the Natural Resource Committee.

Board member Plummer asked about the date of the adjudicatory public hearing for Georgia Pacific's beneficial use application to incinerate construction and demolition debris.

Commissioner Gallagher responded that May 9th is the date for the hearing and explained that the Department received one (1) request for Board jurisdiction, submitted by We The People, and six (6) requests for a public hearing.

Board member Matt Scott asked when new Board members were expected to be posted.

Commissioner Gallagher stated that the Governor is going to announce nominations either today or tomorrow.

B. CHAIRMAN'S COMMENTS: Chairman Wardwell advised that the resolve that the Board study its workload and report back to Legislature (LD 1149) was voted out of committee ought not to pass. Alternatively the Committee will send a letter to the Board requesting that the issue be addressed in the Board's annual summary of activities report due in January 2006. Board staff will conduct workshops as necessary to get input.

C. EXECUTIVE ANALYST COMMENTS: The Executive Analyst explained that a work session to discuss how to approach the request of the Natural Resources Committee will be scheduled at a future regular Board meeting.

D. BOARD CALENDAR:	Reviewed
E. DEPARTMENTAL ORDERS:	Reviewed
F. EXECUTIVE SESSION:	None

II CONSENT AGENDA ITEMS

The Board voted (9-0-0-0) on a motion to approve as presented consent agenda item 1.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson Richard Wardwell, and Nancy Ziegler voted to support the motion.

1. BEP MINUTES – February 3, 2005 (approval)

The Board voted (7-0-2-0) on a motion to approve as presented consent agenda item 2.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Jean T. Wilkinson, Richard Wardwell and Nancy Ziegler voted to support the motion. Board members Virginia and Matt Scott abstained.

2. BEP MINUTES – February 17, 2005 (approval)

Board voted (9-0-0-0) on a motion to approve agenda items 3, 4, 5, 6, and 7 as presented and to approve items 8, 9, and 10 as modified to correct a cross reference in the release language in Paragraph 8 of each agreement [reference should be to paragraph 4, not 5].

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson, Richard Wardwell and Nancy Ziegler voted to support the motion.

3. McCain Foods USA, INC., Easton - Administrative Consent Agreement and Enforcement Order (BAQ)
4. Megquier & Jones, INC., So Portland – Administrative Consent Agreement and Enforcement Order (BRWM)
5. Mike Griffin and Dale Griffin, Cutler – Administrative Consent Agreement (BLWQ – Land)
6. Robert Rowell, SR., Bradley – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
7. Marcel L. Letellier, Arundel – Administrative Consent Agreement (BLWQ - Land)
8. Sears Auto Ctr #6253, Augusta – Administrative Consent Agreement (OC)
9. Sears Auto Ctr #7183, Bangor – Administrative Consent Agreement (OC)
10. Hackett Machine Co., Brewer – Administrative Consent Agreement (OC)

III. Regular Agenda

1. CHAPTER 532, LARGE COMMERCIAL PASSENGER VESSELS / NEW (adoption)
Staff: Hetty Richardson, Bureau of Land and Water Quality

The Board voted (9-0-0-0) on a motion to adopt Chapter 532, Large Commercial Passenger Vessels, New as proposed. The vote was taken pursuant to 38 M.R.S.A. Section 341-D, 413, and 423-D.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson, Richard Wardwell and Nancy Ziegler voted to support the motion.

2. CHAPTER 305, PERMIT BY RULE STANDARDS / AMENDMENT (adoption)
Staff: Mike Mullen, Bureau of Land and Water Quality

The Board voted (9-0-0-0) on a motion to adopt amendments to Chapter 305, Permit-By-Rule Standards as proposed. The vote was taken pursuant to 38 M.R.S.A. Section 341-D and 480-H.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Richard Wardwell, Jean T. Wilkinson and Nancy Ziegler voted to support the motion.

3. CHAPTER 530, SURFACE WATER TOXICS CONTROL PROGRAM and 584 SURFACE WATER QUALITY CRITERIA FOR TOXIC POLLUTANTS / REPEAL AND REPLACE (post to public hearing)

Staff: Dennis Merrill, Bureau of Land and Water Quality

The Board voted (9-0-0-0) on a motion to post to public hearing the repeal and replacement of Chapter 530.5 with Chapter 530, Surface Water Toxics Control Program and Chapter 584 Surface Water Quality Criteria for Toxic Pollutants on June 2, 2005 at 1:00 p.m.. The vote was taken pursuant to 38 M.R.S.A. 341-D and Section 420.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson, Richard Wardwell, and Nancy Ziegler voted to support the motion.

4. MAINE ELECTRONICS, INC. and ROCKWELL COLLINS, INC. / Post Closure License (approval of draft order / post to 45-day comment period)

Staff: Diana McKenzie, Bureau of Remediation and Waste Management

The Board voted (9-0-0-0) to approve the draft Maine Electronics, Inc. and Rockwell Collins, Inc. post closure license as presented and to post the draft order to 45-day written comment. The vote was taken pursuant to 38 M.R.S.A. Section 1319-R and 06-096 CMR Chapters 850 – 857 Hazardous Waste Management Rule.

Board members Nancy Anderson, Irving Faunce, Donald Guimond, Ernest Hilton, Virginia Plummer, Matt Scott, Jean T. Wilkinson, Richard Wardwell, and Nancy Ziegler voted to support the motion.

BOARD TO RECONVENE AT 1:00 PM TO CONDUCT A PUBLIC HEARING:

STATE IMPLEMENTATION PLAN (SIP)

- 15 Percent Rate of Progress Plan;
- 5 Percent Increment of Progress Plan;
- Motor Vehicle Emissions Budget; and
- 2002 Base Year Inventory

Next Regular Board Meeting – Thursday, May 5, 2005 – Holiday Inn / Ground Round, Augusta

BOARD OF ENVIRONMENTAL PROTECTION

Holiday Inn / Ground Round, Augusta at 9:00 a.m.

April 21, 2005

I. DEPARTMENTAL

- A. Commissioner's Comments
- B. Chairman's Comments
- C. Executive Analyst Comments
- 001 D. Board Calendar
- E. Departmental Orders / Applications Accepted for Processing
- F. Executive Session

ADMINISTRATIVE CONSENT AGREEMENT:

Proposed wastewater discharge enforcement resolution open for public comment
Pursuant to 38 M.R.S.A. §347-A(6)

Thomas Massey, Ltd, South Bristol
City of Old Town, Old Town

(Staff: John Glowa 287-3901)
(Staff: Jim Crowley 287-3901)

Tentatively scheduled for Board action on June 2, 2005

II. CONSENT AGENDA ITEMS

- 003 1. BEP MINUTES – February 3, 2005 (approval)
- 009 2. BEP MINUTES – February 17, 2005 (approval)
- 013 3. McCAIN FOODS USA, INC., Easton - Administrative Consent Agreement and Enforcement Order (BAQ)
- 023 4. MEGQUIER & JONES, INC., So Portland – Administrative Consent Agreement and Enforcement Order (BRWM)
- 031 5. MIKE GRIFFIN and DALE GRIFFIN, Cutler – Administrative Consent Agreement (BLWQ – Land)
- 035 6. ROBERT ROWELL, SR., Bradley – Administrative Consent Agreement and Enforcement Order (BLWQ – Land)
- 039 7. MARCEL L. LETELLIER, Arundel – Administrative Consent Agreement (BLWQ - Land)
- 043 8. SEARS AUTO CTR #6253, Augusta – Administrative Consent Agreement (OC)
- 049 9. SEARS AUTO CTR #7183, Bangor – Administrative Consent Agreement (OC)
- 053 10. HACKETT MACHINE CO., Brewer – Administrative Consent Agreement (OC)

III. REGULAR AGENDA ITEMS

- 057 1. CHAPTER 532, LARGE COMMERCIAL PASSENGER VESSELS / NEW (adoption)
Staff: Hetty Richardson, Bureau of Land and Water Quality
- 069 2. CHAPTER 305, PERMIT BY RULE STANDARDS / AMENDMENT (adoption)
Staff: Mike Mullen, Bureau of Land and Water Quality

*At its meeting the Board will accept additional public comment on a rule proposed for adoption. Additional public comment will be accepted only if it is directly related to comments received during the formal rulemaking comment period or is in response to proposed changes. Comments must be presented orally except by leave of the Chairman

- 097 3. CHAPTER 530, SURFACE WATER TOXICS CONTROL PROGRAM and 584 SURFACE WATER QUALITY CRITERIA FOR TOXIC POLLUTANTS / REPEAL AND REPLACE (post to public hearing)

Staff: Dennis Merrill, Bureau of Land and Water Quality

- 133 4. MAINE ELECTRONICS, INC. and ROCKWELL COLLINS, INC. / Post Closure License (approval of draft order / post to 45-day comment period)

Staff: Diana McKenzie, Bureau of Remediation and Waste Management

BOARD TO RECONVENE AT 1:00 PM TO CONDUCT A PUBLIC HEARING:

STATE IMPLEMENTATION PLAN (SIP)

- 15 Percent Rate of Progress Plan;
- 5 Percent Increment of Progress Plan;
- Motor Vehicle Emissions Budget; and
- 2002 Base Year Inventory

Next Regular Board Meeting – Thursday, May 5, 2005 – Holiday Inn / Ground Round, Augusta